Supreme Court, U. S.
FILED
JUN 25 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1707

OHIO BUREAU OF EMPLOYMENT SERVICES

and

ALBERT G. GILES,

Appellants,

vs.

LEONARD PAUL HODORY,

Appellee.

On Direct Appeal from the United States District Court for the Northern District of Ohio, Eastern Division

---

MOTION TO DISMISS OR AFFIRM

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With MR. LORDEON on the Motion to Dismiss or Affirm

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ALBERT G. GILES,

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Vs.

LEONARD PAUL HODORY,

Appellee.

On Direct Appeal from the United States District Court for the Northern District of Ohio, Eastern Division

MOTION TO DISMISS OR AFFIRM

Appellee moves the Court, pursuant to Rule 16(1)(d) of the Rules of this Court, to dismiss the appeal herein on the following grounds:

(1) Appellants' Question No. 1 was not decided by the District Court, or was presumptively decided in favor of Appellants, and, consequently, Appellants have no standing to assert that question as a basis for review; and

(2) Appellants' Question No. 5 presents an issue which was waived by Appellants' failure to assert it before the District Court; and, even assuming that the issue was not waived, it does not present a substantial federal question.

Appellee further moves the Court, pursuant to Rules 16(1)(c) and 16(1)(d) of the Rules of this Court, to affirm the judgment of the District Court on the following grounds:

(1) It is manifest that Appellants' Question No. 4

as a basis for decision of this cause is so unsubstantial as to not need further argument; and (2) It is manifest that Appellants' Questions No.2 and No. 3 as a basis for decision of this cause are so unsubstantial as to not need further agrument, and those questions were so manifestly decided right by the District Court, that the case ought not to be held for further argument.

STATEMENT OF THE CASE

The facts which formed the basis of the proceedings and decision below are adequately and concisely set forth in the Findings of Fact in the opinion of the District Court which has now been published in the Federal Supplement (Hodory v. Ohio Bur. of Emp. Services, 408 F. Supp. 1016 (N.D. Ohio E.D. 1976)), and Appellee adopts those Findings (408 F. Supp. 1018) as accurately reflecting the factual context in which the legal issues presented in this appeal must be determined. Appellee does not take exception with the Statement of the Case presented in the Jurisdictional Statement insofar as it is conformity with the findings of the District Court. However, Appellee must take strong exception to the statement (Jurisdictional Statement, p. 8) that briefs were submitted and oral arguments held before the three-judge court on the six issues enumerated at pages 7 and 8 of the Jurisdictional Statement. This assertion is totally misleading insofar as it tends to convey the impression that the District Court decided the case on substantive constitutional issues not briefed or argued before it. Appellee will not pretend to conceal well-warranted displeasure at Appellants' attempt to assert before this Court such a gross and critical misrepresentation concerning the conduct of the proceedings below. The Jurisdictional Statement itself reveals that the complaint below raised the issues of the constitutionality of Ohio Revised Code, Section 4141.29(D)(1)(a), under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States (Jurisdictional Statement, p. 6). The briefs of both Appellants and Appellee submitted to

the court below, fully discussed the due process and equal protection issues (Appendix hereto, pp. 14-17), and the questions were extensively argued before the three-judge panel.

ARGUMENT

A. APPELLANTS' QUESTION NO. 1 WAS NOT DECIDED BY THE DISTRICT COURT, OR WAS PRESUMPTIVELY DECIDED FAVORABLY TO APPELLANTS, GIVING APPELLANTS NO STANDING TO ASSERT THAT QUESTION AS A BASIS FOR REVIEW BY THIS COURT.

Appellants as their first question presented on this appeal ask this Court to consider whether the former Ohio labor dispute disqualification from receipt of unemployment compensation benefits conflicts with the Federal Social Security Act (Jurisdictional Statement, p.4). Appellee grants that this issue was raised and argued by him before the District Court, but that Court made no express finding on this issue in its opinion. (See Hodory v. Ohio Bur. of Emp. Services, 408 F. Supp. 1016 (N.D. Ohio E.D. 1976)). Since the issue was not expressly decided by the Court below, the decision of the District Court presents nothing on this question for review on appeal by this Court. Further, since the District Court was presented with both the statutory issue and substantive constitutional issues, and decided the case solely on the basis of the substantive constitutional issues, it must be presumed that the District Court decided the statutory issue favorably to Appellants and adversely to Appellee. While the presumed determination might form the basis of a cross-appeal by Appellee, it raises no issue which can form the basis of an appeal by Appellants. It is basic to the law of appellate review that an appeal brings up for review only that which was decided adversely to appellant (Loudon v. Taxing District, 104 U.S. 771, 774 (1881).

Appellee not having taken a cross-appeal, and the question as to whether the former Ohio labor dispute disqualification conflicts with the Federal Social Security Act having been presumptively decided favorably to Appellants by the Court below, that question provides no basis for setting this case for further argument at the behest of Appellants. Consequently, insofar as Question No. 1 is asserted as a basis for maintaining the instant appeal, the appeal

should be dismissed pursuant to Rule 16(1)(d) of the Rules of this Court.

B. APPELLANTS' QUESTION NO. 5 PRESENTS AN ISSUE WHICH WAS WAIVED BY APPELLANTS' FAILURE TO ASSERT IT BEFORE THE DISTRICT COURT; AND, EVEN ASSUMING THAT THE ISSUE WAS NOT WAIVED, IT DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Appellants as their fifth question presented on this appeal ask this Court to consider whether the decision of the District Court deprived certain employers of their substantive and procedural due process rights under the Fifth and Fourteenth Amendments of the Constitution of the United States (Jurisdictional Statement, p. 4). Stripped of the constitutional trappings with which Appellants have clothed the question, it merely raises the issue of nonjoinder in the proceedings below of the principal employers of Appellee and others similarly situated. Appellants at best raise a question of nonjoinder of an indispensable party. Appellants have, however, presented this Court with no authority to support the contention that the employers were indispensable parties. Further, even assuming that the employers were indispensable parties, the objection of their nonjoinder was waived under Rule 12(h), Federal Rules of Civil Procedure, by Appellants' failure to make that objection at any stage of the proceedings below. During the period of over one year between commencement of the action and entry of judgment by the District Court, Appellants were fully aware of the asserted interests of the employers, but did not take a single, solitary step to secure their joinder or participation in the proceedings by way of intervention. In view of Appellants inaction, the only circumstance under which the objection of nonjoinder would not be waived is if the nonjoinder of the employers deprived the District Court of jurisdiction of the subject matter (F.R.C.P., Rule 12(h)(2)). Appellants have made no such contention before this Court, and have presented no authority which would support such a proposition.

Assuming, arguendo, that the objection of nonjoinder of the employers was not waived, Appellants have offered the Court no authority to support the position that such nonjoinder presents a substantial federal question of constitutional dimension. Consequently, Appellants' Question No. 5 presents no

issue which would justify setting this case for argument, and, insofar as that question is relied on to support this appeal, the appeal should be dismissed pursuant to Rule 16(d)(1) of the Rules of this Court.

C. IT IS MANIFEST THAT APPELLANTS' QUESTION NO. 4 AS A BASIS FOR DECISION OF THIS CAUSE IS SO UNSUBSTANTIAL AS TO NOT REQUIRE FURTHER ARGUMENT.

Appellants, as their fourth question presented on this appeal, ask this Court to consider whether the decision of the three-judge District Court is in conflict with other jurisdictions and against the weight of authority (Jurisdictional Statement, p. 4). This question, as a basis for decision of this cause, is so unsubstantial as not to require further argument. Appellants, to the accomodation of Appellee, have included in the Appendix to the Jurisdictional Statement a table summarizing the provisions of the labor dispute disqualifications of the fifty-two jurisdictions of the United States, consisting of the fifty states, the District of Columbia and Puerto Rico (Jurisdictional Statement, Appendix pp. 66-68). Examination of this table immediately reveals that in forty-three of the jurisdictions, individuals are excluded from disqualification if neither they nor employees of the same grade or class are participating the dispute of directly interested in the dispute. An employee is considered "directly interested" within the meaning of these statutes if his wages, hours of conditions of work will be affected by the outcome of the dispute. (See e.g., Martineau v. Director of Division of Emp. Sec!, 329 Mass. 44, 106 N.E. 2d 420, 424 (1952); see also The Purposes and Provisions of the "Labor Dispute" Disqualification from Unemployment Compensation. 56 Northwestern L. Rev. 662, 674 (1961)). Thirty of the above forty-three jurisdictions require, to avoid disqualification, that individuals also show that neither they nor employees of the same grade of class are financing the dispute. It is eminently clear that the disqualification imposed upon Appellee and his fellow steelworkers under former Ohio Revised Code, Section 4141.29(D)(1)(a), would not have been imposed in any of the above forty-three jurisdictions.

Examination of the labor dispute disqualifications in seven of the remaining nine of the fifty-two jurisdictions further reveals the frivolousness of Appellants' Question No. 4. The Alabama labor dispute disqualification has

been interpreted as to not deny benefits to an employee who becomes involuntarily unemployed by reason of a labor dispute in which he is in no way involved, and which he, his agents, or organization were powerless to prevent (Department of Industrial Relations v. Drummond, 30 Ala. App. 78, 1 So. 2d 395, 398 (1940), cert, den. 241 Ala. 142, 1 So. 2d 402 (1940); see also Ex Parte McCleney, 286 Ala. 288, 239 So. 2d 311, 314 (1970)). The relevant California statute clearly limits disqualification to persons who have voluntarily left their employment because of a trade dispute (Cal. Unemp. Ins. Code, Sec. 1262). The Supreme Court of Delaware has held the labor dispute disqualification in that state applicable only to individuals who are participating in the dispute, with even a direct interest in the outcome being insufficient to disqualify (Lowe Bros., Inc. v. Unemp. Ins. App. Bd., 332 A.2d 150, 153 (Del. 1975)). The labor dispute disqualification in the state of Kentucky applies only where there is a dispute in active progress at the establishment where the individual is or was employed (K.R.S., Sec.341.360(1)). The Court of Appeals of Kentucky, in a highly informative opinion in United States Steel Corp. v. Brown, 441 S.W. 2d 205 (Ky.1969), determined that a coal processing plant and mining operations, ninety miles apart and within the state, did not constitute a single establishment within the meaning of the labor dispute disqualification. The court's decision in Brown was in harmony with its prior ruling in Ford Motor Co. v. 243 S.W. 2d 657(Ky. 1951), Kentucky Unemp. Comp. Com'n., /holding that automobile assembly plants in Kentucky and assembly plants in Michigan did not constitute the same establishment within the meaning of the labor dispute disqualification.

The New York labor dispute disqualification suspends benefits for seven weeks where an individual has lost his employment because of a strike, lockout, or industrial controversy at the establishment in which he was employed (Consol. Laws of N.Y., Labor Law, Sec. 592). In an enlightening, recent decision interpreting that statute, the court determined that employees at a particular automobile plant, not on strike, were not disqualified when production was curtailed due to strikes at assembly plants operated by the employer at other locations (Farina v. General Motors Corp., 41 A.D.2d 98, 341 N.Y.S.2d 460 (1973), mot. for leave to appeal den., sub. nom. Farina v. Levine, 32 N.Y.2d 612, 246

N.Y.S.2d 1026 (1973)). Under the labor dispute disqualification in Utah, an individual is disqualified only where his unemployment is due to a strike involving his grade, class, or group of workers at the factory or establishment where he is or was last employed (Utah Code Ann., Sec. 35-4-5(d)). The relevant Wisconsin statute disqualifies an employee who has left or lost his employment because of a bona fide labor dispute in active progress in the establishment where he is or was employed (W.S.A., Sec. 108.04(10)). The Supreme Court of Wisconsin has held in a very recent decision that the statute did not disqualify airline ground employees laid off at terminals in Madison and Milwaukee because of a strike by pilots and establishment of picket lines in Minneapolis, Minn., and Seattle, Wash. (Abendroth v. Wis. Dept. of I., L. & H. Rel., 69 Wis. 2d 736,233 N.W. 2d 343 (1975)).

The above analysis of the labor dispute disqualifications in the seven states of Alabama, California, Delaware, Kentucky, New York, Utah and Wisconsin, coupled with analysis of the relevant statutes in the forty-three jurisdictions having the most common type of provisions, clearly demonstrates that Appellee and his fellow workers would not have been denied unemployment compensation benefits in fifty of the fifty-two jurisdictions of the United States. Since the West Virginia coal mine strike which caused disqualification of Appellee and his fellow Ohio steelworkers, amendment of the Ohio statute has raised the total to fifty-one of fifty jurisdictions in which a disqualification would not be imposed upon persons who became unemployed under the circumstances of Appellee. (As to the amendment to the Ohio Law, see Hodory v. Ohio Bur. of Emp. Services, 408 F. Supp. 1016, 1018 (N.D. Ohio E.D. (1976).) In view of this state of the law, it is manifest that any question as to whether the decision of the District Court is in conflict with other jurisdictions, and against the weight of authority, is so unsubstantial as to not require further argument. Therefore, insofar as Appellants rely on their Question No. 4 to justify plenary review in this case, the judgment of the District Court should be affirmed pursuant to Rule 16(1)(c) of the Rules of this Court.

D. IT IS MANIFEST THAT APPELLANTS' QUESTIONS NO. 2 and 3 AS A BASIS FOR DECISION OF THIS CAUSE ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT, AND THOSE QUESTIONS WERE SO MANIFESTLY DECIDED RIGHT BY THE DISTRICT COURT THAT THE CASE OUGHT NOT TO BE HELD FOR FURTHER ARGUMENT.

Appellants, as their second question raised on this appeal, ask this Court to consider whether a state system of unemployment compensation can predicate disqualification on grounds other than fault; and, as their third question, ask this Court to consider whether application of former Ohio Revised Code, Section 4141.29(D)(1)(a), to disqualify Appellee and others similarly situated from receipt of unemployment compensation benefits, was justified by a suitable governmental interest (Jurisdictional Statement, p.4). These two questions in substance raise only one issue, the issue of whether a suitable governmental interest was served by application of the former statute to deny benefits to steelworkers laid off in Ohio due to a coal mine strike in West Virginia, where the Ohio workers had no connnection whatsoever with the labor dispute in the other state.

All parties have agreed at all stages of these proceedings that the suitable governmental interest served by a labor dispute disqualification from receipt of unemployment compensation benefits is to preserve the "neutrality" of the state in labor controversies. (See Jurisdictional Statement, P.9; see also, generally, Unemployment Compensation in Labor Disputes, 49 Yale L.J. 461, 463-464 (1940); The Purposes and Provisions of the "Labor Dispute" Disqualification from Unemployment Compensation, 56 Northwestern U.L. Rev. 662,663-664(1961); Effect of Participation in Labor Dispute upon Continuation of Unemployment Compensation, 52 Cornell L.Q. 738, 749-750 (1967).) The District Court squarely dealt with the question as to whether the above well-recognized interest was served by disqualifying Appellee and others similarly situated, reached the eminently correct decision that no suitable governmental interest was served by the disqualification, and concluded, therefore, that application of the challenged statute to disqualify Appellee and his fellow abridged their right to equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States (Hodory v. Ohio Bur. of Emp. Services, 408 F.Supp. 1018, 1022-1022 (N.D. Ohio E.D. (1976)). The Court also quite correctly

determined that the challenged application of the former statute did not bear a real and substantial relation to accomplishment of a legitimate state purpose, and was therefore violative of the guarantee of due process of law under the Fourteenth Amendment (408 F. Supp. 1022).

As pointed out in the discussion under Part C, above, denial of benefits to Appellee and his fellows would have occurred under the laws in only two of fifty-two jurisdictions, and that such a denial would now only occur in one of fifth-two. While this is not conclusive as to whether the disqualification sufferred by Appellee and his fellows was in furtherance of a suitable governmental interest, the fact that fifty-one of the fifty-two jurisdictions of the United States do not consider such a disqualification necessary, to serve a suitable governmental interest, gives overwhelming support to the conclusion that such a disqualification does not in fact serve any such interest.

To comment in passing on the law of the one non-conforming jurisdiction, North Carolina, Appellee is aware of Abernathy v. Eastern Airlines, 259 N.C. 190, 130 S.E. 2d 292 (1963), cert. den., 375 U.S. 161, 11 L.Ed.2d 261, 84 S.Ct. 274 (1963). (This Court's denial of certiorari, of course, imports no expression of opinion on the merits of the Abernathy case.) However, insofar as Abernathy might constitute authority for the proposition that denial of unemployment compensation benefits to Appellee and his fellows was constitutionally permissible, Appellee, with all due respect to the high court of North Carolina, maintains that the Abernathy decision was the product of inadequate analysis of constitutional issues, and was incorrectly decided.

Treating Appellants' Questions No. 2 and 3 as asking the Court to consider whether a suitable governmental interest was served by disqualification of Appellee and others similarly situated, it is manifest that such a question as a basis for decision in this cause is so unsubstantial as to not require further argument. Also, this question was so manifestly decided right by the District Court, that, for this further reason, this case ought not be held for further argument. (See Arrowsmith v. Harmoning, 118 U.S. 194, 195, 30 L.E. 243, 6 S. Ct. 1023 (1886); Texas & N.O.R.R. Co. v. Miller, 221 U.S. 408, 416-417, 55 L.E. 789, 31 S. Ct. 534 (1911).) Consequently, the judgment of the District

Court should be affirmed pursuant to Rules 16(1)(c) and 16(1)(d) of the Rules of this Court.

CONCLUSION

For the reasons fully set forth above in this Motion to Dismiss or Affirm, the appeal from the judgment of the three-judge panel of the United States District Court for the Northern District of Ohio, enjoining enforcement of former Ohio Revised Code, Section 4141.29(D)(1)(a), so as to deny payment of unemployment compensation benefits to Appellee and others similarly situated, should be dismissed. Further, in the alternative, for the reasons fully set forth above, the judgment of the District Court should be affirmed without this case being held for further argument.

Respectfully submitted,

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With MR. LORDEON on this Motion to Dismiss or Affirm

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FILED
Jan 17 - 1975

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEONARD PAUL HODORY, Plaintiff v. OHIO BUREAU OF EMPLOYMENT SERVICES, et al., Defendants	No. C 75-15 Y MEMORANDUM OPINION AND ORDER

LAMBROS, DISTRICT JUDGE

Plaintiff filed the above-captioned action on behalf of himself and all other individuals similarly situated, seeking the issuance of an injunction against the continued enforcement of §4141.29(D)(1)(a) of the Ohio Revised Code and the issuance of a declaratory judgment that §4141.29(D)(1)(a), which relates to determinations of an applicant's right to unemployment compensation, is unconstitutional on its face and as applied and violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and §303(a)(1),(3) of the Social Security Act of 1935, as amended, 42 U.S.C. §503(a)(1),(3). Plaintiff has requested the convening of a three-judge panel pursuant to 28 U.S.C. §§2281 and 2284.

Upon due consideration of the pleadings and the briefs filed herein, the Court concludes that the plaintiff's constitutional attack is not insubstantial, and that the complaint properly alleges a basis for equitable relif. Accordingly, it is necessary that a three-judge panel be

convened to hear and determine the issues raised in this action. Noe v. True, ___F.2d___(6th Cir. Dec. 5, 1974); Bailey v. Patterson, 369 US 31 (1961).

Although questions of abstention and jurisdiction have been raised with regard to the claims presented by plaintiff, these questions will be addressed to and determined by the three-judge court.

The plaintiff's request for a three-judge panel is granted, and accordingly, the Court will request the Honorable Harry Phillips, Chief Judge of the United States Court of Appeals for the Sixth Circuit, to designate a panel to hear and decide the issues in this case.

IT IS SO ORDERED.

Thomas D. Lambros
United States District Judge

DATED: 7/11/75

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EXCERPT FROM PAGE 11 OF "BRIEF OF PLAINTIFF HODORY", FILED AND SERVED IN THE PROCEEDINGS BELOW ON OCTOBER 10, 1975

* * * * * * * * * *

III.

SECTION 4141.29(D)(1)(A) OF THE OHIO REVISED CODE, IN REQUIRING DENIAL OF UNEMPLOYMENT COMPENSATION BENEFITS TO PERSONS WHO BECOME UNEMPLOYED BECAUSE OF A LABOR DISPUTE, WHERE SUCH PERSONS IN NO WAY ARE PARTICIPATING IN, FINANCING, OR DIRECTLY INTERESTED IN THE DISPUTE, DENIES SUCH PERSONS THEIR RIGHT TO EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Plaintiff, for his Third Cause of Action, on behalf of himself and all others similarly situated, alleges that the application by Defendant Ohio Bureau of Employment Services of Section 4141.29(D)(1)(a), Ohio Revised Code, to deny unemployment compensation benefits to Plaintiff and such other persons, constitutes a deprivation of their constitutional right to equal protection of the laws. The specific statute in question is part of a general statutory scheme contained in Chapter 4141 of the Ohio Revised Code, enacted pursuant to the federal Social Security Act, to provide for payment of compensation benefits to unemployed persons. As was fully discussed in Part II of this Brief, the overriding purpose of such legislation is to provide benefits for persons involuntarily unemployed without fault of their own.

" " " " " " " " " "

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EXCERPT FROM PAGE 16 OF "BRIEF OF PLAINTIFF HODORY", FILED AND SERVED IN THE PROCEEDINGS BELOW ON OCTOBER 10, 1975

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IV

SECTION 4141.29(D)(1)(a) OF THE OHIO REVISED CODE, IN REQUIRING DENIAL OF UNEMPLOYMENT COMPENSATION BENEFITS TO PERSONS WHO BECOME UNEMPLOYED BECAUSE OF A LABOR DISPUTE, WHERE SUCH PERSONS ARE IN NO WAY PARTICIPATING IN, FINANCING, OR DIRECTLY INTERESTED IN THE DISPUTE, DENIES SUCH PERSONS THEIR RIGHT TO DUE PROCESS OF THE LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Plaintiff, for his Fourth Cause of Action, on behalf of himself and others similarly situated, alleges that the application by Defendants of Section 4141.29(D)(1)(a), Ohio Revised Code, to deny unemployment compensation benefits to Plaintiff and such other persons, constitutes a deprivation of their constitutional right to due process of law. A state's authority to enact unemployment compensation legislation has been justified on the basis of the police power of the state (Cottrell Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959); see also, Barnes v. Board of Review, Ohio Ct. of App., Montgomery Cty., Case No. 3948, Sept. 7, 1972, a copy of which opinion is attached as Appendix "A" to Plaintiff's Brief in Support of Jurisdiction, herein on file). However, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States always operates as a limitation on the improper exercise of the police power. (See generally, Grenada Lumber Co. v. Mississippi, 217 U.S. 433, 441-442, 54 L. Ed. 826, 30 S. Ct. 535 (1910); see also 16 Am. Jur. 2d, "Constitutional Law," Sec. 296, at p. 530.) In order to constitute a proper exercise of the police power, legislation must directly promote the general health, safety, welfare, and morals, and be reasonable, and the means adopted to accomplish the legislative purpose must be suitable to the end in view, must be impartial in operation, and have a real and substantial relation to such purpose (Yeagardin v. Foley, 166 Ohio St.449(1957); Froelich v. City of Cleveland, 99 Ohio St.376 (1919); Nolden v. City Commission, 12 Ohio Misc. 205 (1966)).

* * * * * * * * * * *

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EXCERPT FROM "ANSWER BRIEF OF DEFENDANTS", FILED AND SERVED IN THE PROCEEDINGS BELOW ON OCTOBER 20, 1975, BY RICHARD A. SZILAGYI, ASSISTANT ATTORNEY GENERAL

* * * * * * * * * *

III. THERE IS A STRONG PRESUMPTION IN FAVOR OF THE CONSTITUTIONALITY OF A DULY ENACTED STATUTE. IN ORDER TO OVERCOME THIS PRESUMPTION OF VALIDITY, IT MUST BE ESTABLISHED BEYOND A REASONABLE DOUBT THAT THE STATUTE AND SOME CONSTITUTIONAL PROVISIONS ARE CLEARLY INCOMPATIBLE.

Ohio Revised Code, Section 4141.29(D)(1)(a) does not violate the provisions of the due process or equal protection clauses of the Fourteenth Amendment to the United States Constitution; Section 303(a)(1), (3) of the Social Security Act of 1935, as amended; 42 U.S.C. Section 503(a)(1), (3) or any other provisions of the Federal Statutes relating to Unemployment Compensation.

* * * * * * * * * * *

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EXCERPT FROM "ANSWER BRIEF OF DEFENDANTS", FILED AND SERVED IN THE PROCEEDINGS BELOW ON OCTOBER 20, 1975, BY RICHARD A. SZILAGYI, ASSISTANT ATTORNEY GENERAL

* * * * * * * * * * * *

IV. THE ACTION OF THE BOARD OF REVIEW, BUREAU OF EMPLOYMENT SERVICES UNDER SECTION 4141.29(D)(1)(a), REVISED CODE DID NOT CONSTITUTE INDIVIOUS DISCRIMINATION AND WAS NOT IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION OR ARTICLE I, SECTIONS 2 AND 16 OF THE OHIO CONSTITUTION.

* * * * * * * * * * * *